

Mar 11, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARIA G.,

Plaintiff,

v.

ANDREW M. SAUL,  
COMMISSIONER OF SOCIAL  
SECURITY,<sup>1</sup>

Defendant.

NO: 1:19-CV-3044-FVS

ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND DENYING  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment.  
ECF Nos. 8 and 10. This matter was submitted for consideration without oral

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<sup>1</sup> Andrew M. Saul is now the Commissioner of the Social Security  
Administration. Accordingly, the Court substitutes Andrew M. Saul as the  
Defendant and directs the Clerk to update the docket sheet. *See* Fed. R. Civ. P.  
25(d).

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ~ 1

1 argument. The Plaintiff is represented by Attorney D. James Tree. The Defendant  
2 is represented by Special Assistant United States Attorney Leisa A. Wolf. The  
3 Court has reviewed the administrative record, the parties' completed briefing, and is  
4 fully informed. For the reasons discussed below, the Court **GRANTS** Plaintiff's  
5 Motion for Summary Judgment, ECF No. 8, and **DENIES** Defendant's Motion for  
6 Summary Judgment, ECF No. 10.

### 7 **JURISDICTION**

8 Plaintiff Maria G.<sup>2</sup> filed for supplemental security income and disability  
9 insurance benefits on June 19, 2014, alleging an onset date of November 1, 2013.  
10 Tr. 323-24, 327-32. Benefits were denied initially, Tr. 173-79, and upon  
11 reconsideration, Tr. 192-203. A hearing before an administrative law judge ("ALJ")  
12 was conducted on February 1, 2017, and a subsequent hearing was conducted on  
13 January 10, 2018. Tr. 38-84, 782-90. Plaintiff was represented by counsel and  
14 testified at both hearings. *Id.* The ALJ denied benefits, Tr. 12-34, and the Appeals  
15 Council denied review. Tr. 1. The matter is now before this court pursuant to 42  
16 U.S.C. §§ 405(g); 1383(c)(3).

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19 <sup>2</sup> In the interest of protecting Plaintiff's privacy, the Court will use Plaintiff's first  
20 name and last initial, and, subsequently, Plaintiff's first name only, throughout this  
21 decision.

## BACKGROUND

The facts of the case are set forth in the administrative hearing and transcripts, the ALJ's decision, and the briefs of Plaintiff and the Commissioner. Only the most pertinent facts are summarized here.

Plaintiff was 51 years old at the time of the second hearing. Tr. 40. She has received her GED. Tr. 40. Plaintiff testified that she lives with her mom, dad, and two children. Tr. 63. Plaintiff has work history as a harvest worker, truck driver, landscaper, and laborer. Tr. 54-55, 73. Plaintiff testified that she could not work as a fruit sorter because her knee, foot, and arms hurt, and she "can't use [her] arms like they want." Tr. 58.

Plaintiff reported that it is hard for her to use her hands, and she has pain in her arms, knees, and down her back. Tr. 56. On "bad days" she spends most of the day in bed, and she might be sick for a whole month. Tr. 60-61. She testified that she can wash three plates and two cups before she has to rest for ten minutes. Tr. 58-59. Plaintiff reported that she can sleep for two to three hours at a time because she "get[s] anxiety." Tr. 59, 61-62.

## STANDARD OF REVIEW

A district court's review of a final decision of the Commissioner of Social Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158

1 (9th Cir. 2012). “Substantial evidence” means “relevant evidence that a reasonable  
2 mind might accept as adequate to support a conclusion.” *Id.* at 1159 (quotation and  
3 citation omitted). Stated differently, substantial evidence equates to “more than a  
4 mere scintilla[,] but less than a preponderance.” *Id.* (quotation and citation omitted).  
5 In determining whether the standard has been satisfied, a reviewing court must  
6 consider the entire record as a whole rather than searching for supporting evidence in  
7 isolation. *Id.*

8 In reviewing a denial of benefits, a district court may not substitute its  
9 judgment for that of the Commissioner. If the evidence in the record “is susceptible  
10 to more than one rational interpretation, [the court] must uphold the ALJ’s findings  
11 if they are supported by inferences reasonably drawn from the record.” *Molina v.*  
12 *Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court “may not  
13 reverse an ALJ’s decision on account of an error that is harmless.” *Id.* An error is  
14 harmless “where it is inconsequential to the [ALJ’s] ultimate nondisability  
15 determination.” *Id.* at 1115 (quotation and citation omitted). The party appealing  
16 the ALJ’s decision generally bears the burden of establishing that it was harmed.  
17 *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

## 18 FIVE-STEP EVALUATION PROCESS

19 A claimant must satisfy two conditions to be considered “disabled” within the  
20 meaning of the Social Security Act. First, the claimant must be “unable to engage in  
21 any substantial gainful activity by reason of any medically determinable physical or

1 mental impairment which can be expected to result in death or which has lasted or  
2 can be expected to last for a continuous period of not less than twelve months.” 42  
3 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant’s impairment must  
4 be “of such severity that he is not only unable to do his previous work[,] but cannot,  
5 considering his age, education, and work experience, engage in any other kind of  
6 substantial gainful work which exists in the national economy.” 42 U.S.C. §§  
7 423(d)(2)(A), 1382c(a)(3)(B).

8       The Commissioner has established a five-step sequential analysis to determine  
9 whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§ 404.1520(a)(4)(i)-  
10 (v), 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s  
11 work activity. 20 C.F.R. §§ 404.1520(a)(4)(i), 416.920(a)(4)(i). If the claimant is  
12 engaged in “substantial gainful activity,” the Commissioner must find that the  
13 claimant is not disabled. 20 C.F.R. §§ 404.1520(b), 416.920(b).

14       If the claimant is not engaged in substantial gainful activity, the analysis  
15 proceeds to step two. At this step, the Commissioner considers the severity of the  
16 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the  
17 claimant suffers from “any impairment or combination of impairments which  
18 significantly limits [his or her] physical or mental ability to do basic work  
19 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),  
20 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,  
21

1 however, the Commissioner must find that the claimant is not disabled. 20 C.F.R.  
2 §§ 404.1520(c), 416.920(c).

3 At step three, the Commissioner compares the claimant's impairment to  
4 severe impairments recognized by the Commissioner to be so severe as to preclude a  
5 person from engaging in substantial gainful activity. 20 C.F.R. §§  
6 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more severe  
7 than one of the enumerated impairments, the Commissioner must find the claimant  
8 disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

9 If the severity of the claimant's impairment does not meet or exceed the  
10 severity of the enumerated impairments, the Commissioner must pause to assess the  
11 claimant's "residual functional capacity." Residual functional capacity (RFC),  
12 defined generally as the claimant's ability to perform physical and mental work  
13 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§  
14 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the  
15 analysis.

16 At step four, the Commissioner considers whether, in view of the claimant's  
17 RFC, the claimant is capable of performing work that he or she has performed in the  
18 past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). If the  
19 claimant is capable of performing past relevant work, the Commissioner must find  
20 that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f). If the  
21 claimant is incapable of performing such work, the analysis proceeds to step five.

1 At step five, the Commissioner considers whether, in view of the claimant's  
2 RFC, the claimant is capable of performing other work in the national economy. 20  
3 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination, the  
4 Commissioner must also consider vocational factors such as the claimant's age,  
5 education and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
6 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the  
7 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§  
8 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other  
9 work, analysis concludes with a finding that the claimant is disabled and is therefore  
10 entitled to benefits. 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1).

11 The claimant bears the burden of proof at steps one through four. *Tackett v.*  
12 *Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the  
13 burden shifts to the Commissioner to establish that (1) the claimant is capable of  
14 performing other work; and (2) such work "exists in significant numbers in the  
15 national economy." 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v. Astrue*,  
16 700 F.3d 386, 389 (9th Cir. 2012).

### 17 ALJ'S FINDINGS

18 At step one, the ALJ found that Plaintiff has not engaged in substantial gainful  
19 activity since November 1, 2013, the alleged onset date. Tr. 17. At step two, the  
20 ALJ found that Plaintiff has the following severe impairments: fibromyalgia,  
21 affective disorders, somatoform disorders, anxiety, and obesity. Tr. 17. At step

1 three, the ALJ found that Plaintiff does not have an impairment or combination of  
2 impairments that meets or medically equals the severity of a listed impairment. Tr.

3 18. The ALJ then found that Plaintiff has the RFC

4 to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b)  
5 except she can frequently balance. She can occasionally climb ramps,  
6 stairs, ladders, ropes, and scaffolds. She can occasionally stoop, kneel,  
7 crouch, and crawl. She is capable of understanding and remembering  
8 short, simple instructions consistent with unskilled work. She is able  
9 to sustain attention and concentration for short, simple instructions and  
work-like procedures. She can have frequent changes to the work  
environment with at least 1-day notice of material changes (time, place,  
etc.). She is capable of setting realistic, work-related goals. She may  
be off task about 10 percent over the course of an 8-hour workday. She  
can frequently handle and finger bilaterally.

10 Tr. 19. At step four, the ALJ found that Plaintiff is capable of performing past  
11 relevant work as a harvest worker, fruit and laborer, and landscaper. Tr. 25. In the  
12 alternative, at step five, the ALJ found that considering Plaintiff's age, education,  
13 work experience, and RFC, there are jobs that exist in significant numbers in the  
14 national economy that Plaintiff can perform, including: cleaner, housekeeping;  
15 bakery worker, conveyer line; and bindery machine feeder. Tr. 26. On that basis,  
16 the ALJ concluded that Plaintiff has not been under a disability, as defined in the  
17 Social Security Act, from November 1, 2013, through the date of the decision. Tr.  
18 26.

## 19 ISSUES

20 Plaintiff seeks judicial review of the Commissioner's final decision denying  
21 him disability insurance benefits under Title II of the Social Security Act and



1 supplemental security income benefits under Title XVI of the Social Security Act.

2 ECF No. 8. Plaintiff raises the following issues for this Court’s review:

- 3 1. Whether the ALJ properly considered the medical opinion evidence; and
- 4 2. Whether the ALJ properly considered Plaintiff’s symptom claims.

## 5 **DISCUSSION**

### 6 **A. Medical Opinions**

7 There are three types of physicians: “(1) those who treat the claimant (treating  
8 physicians); (2) those who examine but do not treat the claimant (examining  
9 physicians); and (3) those who neither examine nor treat the claimant [but who  
10 review the claimant's file] (nonexamining [or reviewing] physicians).” *Holohan v.*  
11 *Massanari*, 246 F.3d 1195, 1201–02 (9th Cir. 2001) (citations omitted). Generally, a  
12 treating physician's opinion carries more weight than an examining physician's, and  
13 an examining physician's opinion carries more weight than a reviewing physician's.  
14 *Id.* If a treating or examining physician's opinion is uncontradicted, the ALJ may  
15 reject it only by offering “clear and convincing reasons that are supported by  
16 substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005).  
17 Conversely, “[i]f a treating or examining doctor's opinion is contradicted by another  
18 doctor's opinion, an ALJ may only reject it by providing specific and legitimate  
19 reasons that are supported by substantial evidence.” *Id.* (citing *Lester v. Chater*, 81  
20 F.3d 821, 830-31 (9th Cir. 1995)). “However, the ALJ need not accept the opinion  
21 of any physician, including a treating physician, if that opinion is brief, conclusory

1 and inadequately supported by clinical findings.” *Bray v. Comm’r of Soc. Sec.*  
2 *Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009) (quotation and citation omitted).

3 Plaintiff argues the ALJ erroneously considered the opinions of examining  
4 physician William Drenguis, M.D., examining physician Mary Pellicer, M.D., and  
5 examining psychologist Roland Dougherty, Ph.D. ECF No. 8 at 4-16.

6 *1. Dr. William Drenguis*

7 In December 2013, Dr. Drenguis examined Plaintiff and opined that she was  
8 limited to standing and walking four hours in an eight-hour workday with normal  
9 breaks; sitting for five hours in an eight-hour workday with normal breaks; lifting  
10 and carrying twenty pounds occasionally and ten pounds frequently; occasionally  
11 climbing, stooping, kneeling, crouching, and crawling; frequently reaching; and  
12 occasionally handling, fingering and feeling. Tr. 570-71. The ALJ gave “some  
13 weight” to Dr. Drenguis’ finding regarding Plaintiff’s ability to stand, walk, and sit.  
14 However, the ALJ gave “great weight” to “the portion of Dr. Drenguis’ opinion  
15 limiting [Plaintiff] to frequent handling and fingering as this is consistent with his  
16 exam findings showing some limited range of motion in her fingers and wrists.”<sup>3</sup>

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18 <sup>3</sup> The ALJ also found that while Dr. Drenguis limited Plaintiff to “frequent reaching,  
19 his own examination showed normal cervical and shoulder range of motion and does  
20 not support this finding.” Tr. 24. Accordingly, the ALJ did not include any  
21 limitations on reaching in the assessed RFC. *See* Tr. 24. The Court declines to

1 Tr. 23-24. Plaintiff argues the ALJ failed to properly evaluate Dr. Drenguis’  
2 examining medical opinion for several reasons.

3 First, Plaintiff notes that the ALJ “misapprehended the examining physician’s  
4 conclusion regarding [Plaintiff’s] manipulative limitations.” ECF No. 8 at 6.  
5 Specifically, the ALJ gave “great weight” to the portion of Dr. Drenguis’ opinion  
6 limiting Plaintiff to “frequent handling and fingering,” and incorporated this  
7 limitation into the assessed RFC. Tr. 19, 23-24. However, as noted by Plaintiff,  
8 “Dr. Drenguis’ functional assessment clearly states that, due to bilateral hand  
9 arthritis, [Plaintiff] can only ‘occasionally handle, finger, and feel.’” ECF No. 8 at 6  
10 (emphasis in original); Tr. 571. Thus, “[e]ither the ALJ intended to afford ‘great  
11 weight’ to Dr. Drenguis’ limitation to occasional manipulative activities, in which  
12 case the ALJ’s RFC assessment is inaccurate, or the ALJ misread the examining  
13 physician’s medical source statement and, thus, has not evaluated the limitation  
14 found by Dr. Drenguis. In any event, this error compels reversal of the ALJ’s  
15 disability determination.” ECF No. 8 at 6. The Court agrees. The ALJ erred by

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17 \_\_\_\_\_  
18 address this issue because it was not identified with specificity in Plaintiff’s opening  
19 brief. *Carmickle v. Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir.  
20 2008). However, in light of the need to remand the case for reconsideration of Dr.  
21 Drenguis’ opinion, as discussed herein, the ALJ should reevaluate Dr. Drenguis’  
assessed reaching limitation on remand.

1 failing to either provide the requisite reasons to reject the manipulative limitations  
2 assessed by Dr. Drenguis, or incorporate them into Plaintiff's RFC. *See Marsh v.*  
3 *Colvin*, 792 F.3d 1170, 1173 (9th Cir. 2015) (failure to address medical opinion was  
4 reversible error); *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 886 (9th Cir. 2006)  
5 ("an ALJ is not free to disregard properly supported limitations").

6 Moreover, the record, as it stands, does not permit the Court to conclude that  
7 the error harmless. *See Molina*, 674 F.3d at 1115 (error is harmless "where it is  
8 inconsequential to the [ALJ's] ultimate nondisability determination."). Because the  
9 hypothetical RFC posed to the vocational expert did not reflect all of plaintiff's  
10 limitations, the expert's testimony has no evidentiary value to support the ALJ's step  
11 five finding that plaintiff can perform jobs in the national economy. *Robbins*, 466  
12 F.3d at 886. Accordingly, the ALJ's step five determination is unsupported by  
13 substantial evidence. Because the ALJ erred by failing to either reject or properly  
14 incorporate Dr. Drenguis' opined manipulative limitations into plaintiff's RFC, the  
15 opinion must be reconsidered on remand, along with the subsequent steps of the  
16 sequential analysis.

17 Second, Plaintiff argues the ALJ improperly rejected Dr. Drenguis'  
18 assessment that Plaintiff was limited to standing and walking for four hours in an  
19 eight-hour workday, and sitting for five hours in an eight-hour workday, due to  
20 arthritis in her knees and lumbar spine. ECF No. 8 at 7; Tr. 570. The ALJ generally  
21 gave "some weight" to this portion of Dr. Drenguis' opinion because "the records do

1 not support these limitations.” Tr. 23. In support of this finding, the ALJ noted that  
2 (1) “Dr. Drenguis did not review any imaging results and had minimal records to  
3 review prior to his evaluation,” and (2) “[w]hile [Plaintiff] had some limited range of  
4 motion in her back and hands, the remainder of the exam findings were largely  
5 normal.”<sup>4</sup> Tr. 23.

6 The consistency of a medical opinion with the record as a whole is a relevant  
7 factor in evaluating that medical opinion. *See Orn v. Astrue*, 495 F.3d 625, 631 (9th  
8 Cir. 2007); *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (ALJ may  
9 properly reject a medical opinion if it is inconsistent with the provider's own

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 <sup>4</sup> The ALJ also noted that Plaintiff “herself reported significant relief of her symptoms  
12 with medication, and at the time of Dr. Drenguis’ evaluation, she stated that she had  
13 not taken medication for 2 weeks indicating that her symptoms were likely not as  
14 severe as she is now alleging.” Tr. 23. As noted by Defendant, “a treatment’s  
15 effectiveness is relevant to determining the severity of [Plaintiff’s] symptoms.” ECF  
16 No. 10 at 17 (citing *Warre v. Comm’r of Soc. Sec. Admin.*, 439 F.3d 1001, 1006 (9th  
17 Cir. 2006)). However, while improvement with treatment is a relevant consideration  
18 in evaluating Plaintiff’s symptom claims, the Court is unable to discern how  
19 Plaintiff’s report to Dr. Drenguis that she did not take medication for two weeks prior  
20 to the examination is a specific and legitimate reason, supported by substantial  
21 evidence, for the ALJ to discount the medical opinion evidence.

1 treatment notes). However, when explaining his reasons for rejecting medical  
2 opinion evidence, the ALJ must do more than state a conclusion; rather, the ALJ  
3 must “set forth his own interpretations and explain why they, rather than the  
4 doctors’, are correct.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998). “This  
5 can be done by setting out a detailed and thorough summary of the facts and  
6 conflicting clinical evidence, stating his interpretation thereof, and making findings.”  
7 *Id.*

8 Here, the ALJ generally noted, without citation to the record, that aside from  
9 “some limited range of motion in her back and hands, the remainder of the exam  
10 findings were largely normal.” Tr. 23. As an initial matter, due to the lack of any  
11 citation to the record, the Court is unclear whether the ALJ is purporting to reject Dr.  
12 Drenguis’ opinion based on his own “largely normal” examination findings, or based  
13 on examination findings throughout the longitudinal record, which the ALJ  
14 generally contends were not reviewed by Dr. Drenguis. *See Brown-Hunter v.*  
15 *Colvin*, 806 F.3d 487, 495 (9th Cir. 2015) (a court “cannot substitute [the court’s]  
16 conclusions for the ALJ’s, or speculate as to the grounds for the ALJ’s  
17 conclusions.”)). Moreover, while not acknowledged by the ALJ, the Court notes  
18 that, in addition to limited range of motion in Plaintiff’s back and hands, Dr.  
19 Drenguis found Plaintiff had limited range of motion in her wrists and fingers;  
20 tenderness in her lumbar spine; and tenderness, crepitus, and passive range of  
21 motion in her right knee. Tr. 569-70. Dr. Drenguis also observed that Plaintiff’s

1 gait was “slow and mildly antalgic with [Plaintiff] favoring her right leg,” and she  
2 experienced knee pain when she did toe to heel walking, hopping, and squatting. Tr.  
3 568.

4 Based on the foregoing, the Court finds the ALJ failed to properly summarize  
5 and interpret the entirety of Dr. Drenguis’ clinical findings; nor did the ALJ cite any  
6 records from the overall record in support of his finding. Tr. 23. Thus, the ALJ’s  
7 conclusory rejection of Dr. Drenguis’ opinion because it is unsupported by “largely  
8 normal” examination findings, without the requisite interpretations of the “facts and  
9 conflicting clinical evidence,” is not supported by substantial evidence. This was  
10 not a specific and legitimate reason for the ALJ to reject this portion of Dr.  
11 Drenguis’ opinion.

12 The Court finds the ALJ did not properly consider Dr. Drenguis’ opinion, and  
13 it must be reconsidered on remand.

14 *2. Mary Pellicer, M.D.*

15 In October 2014, Dr. Pellicer examined Plaintiff and opined that she could  
16 stand and walk two to four hours in an eight-hour workday with more frequent  
17 breaks due to fibromyalgia; sit for six hours in an eight-hour workday with more  
18 frequent breaks due to fibromyalgia; lift and carry less than ten pounds occasionally;  
19 never bend, squat, crawl, kneel or climb; and manipulate occasionally. Tr. 588. The  
20 ALJ gave “little weight” to Dr. Pellicer’s opinion because

21 the CDIU investigation found [Plaintiff] was able to drive long  
distances and engage in more activities than she reported to Dr. Pellicer.

1 Dr. Pellicer's opinion appears to be largely based on [Plaintiff's] self-  
2 reporting, which is not supported by the longitudinal history of  
3 treatment records showing minimal treatment for her pain complaints  
4 and reported improvement with medication alone.

5 Tr. 24.

6 First, an ALJ may reject a physician's opinion if it is based "to a large extent"  
7 on Plaintiff's self-reports that have been properly discounted as not credible.

8 *Tommasetti*, 533 F.3d at 1041. The only evidence cited by the ALJ in support of this

9 finding was a general notation that Dr. Pellicer "did not review significant records

10 prior to rendering her opinion." Tr. 24. However, the record indicates that Dr.

11 Pellicer did review the August 2014 SSA Function Report, as well as medical

12 records from 2013. Tr. 584. Moreover, the ALJ entirely failed to consider Dr.

13 Pellicer's physical examination findings, which included findings that Plaintiff

14 needed assistance to get on and off the exam table, could not make a closed fist with

15 either hand, complained of pain in muscles and joints, had "slow and clumsy" finger

16 to nose bilaterally, could not do heel to shin, could not pick up coins from a flat

17 surface with either hand, had slow gait, could not walk on heels, toes or in tandem,

18 and could not bend or squat. Tr. 586-88. Moreover, the ALJ did not consider Dr.

19 Pellicer's findings that Plaintiff had decreased range of motion in her back, neck,

20 knee, shoulder, elbow, ankle, and wrist, and the ALJ failed to consider mental status

21 examination findings that Plaintiff's mood was depressed, her affect was flat, and

she remembered only one out of three words after five minutes. Tr. 585-87. Neither



1 the ALJ, nor the Defendant, offers any evidence that Dr. Pellicer relied “to a large  
2 extent” on Plaintiff’s subjective complaints as opposed to these extensive clinical  
3 findings. Based on the foregoing, the ALJ’s rejection of Dr. Pellicer’s opinion  
4 because “it appears to be based largely on” Plaintiff’s self-report was not a specific  
5 and legitimate reason, supported by substantial evidence.

6 Second, the ALJ generally notes that Dr. Pellicer’s opinion is not supported  
7 “by the longitudinal history of the treatment records showing minimal treatment for  
8 her pain complaints and reported improvement with medication alone.” Tr. 24. The  
9 ALJ also cited the CDIU investigation report that found Plaintiff “was able to drive  
10 long distances and engage in more activities than she reported to Dr. Pellicer.” Tr.  
11 24. The consistency of a medical opinion with the record as a whole is a relevant  
12 factor in evaluating that medical opinion. *See Orn*, 495 F.3d at 631; *see also*  
13 *Morgan v. Comm’r Soc. Sec. Admin.*, 169 F.3d 595, 601-02 (9th Cir. 1999) (an ALJ  
14 may discount an opinion that is inconsistent with a claimant’s reported functioning).  
15 However, as noted above, when explaining his reasons for rejecting medical opinion  
16 evidence, the ALJ must do more than state a conclusion; rather, the ALJ must “set  
17 forth his own interpretations and explain why they, rather than the doctors’, are  
18 correct.” *Reddick*, 157 F.3d at 725. “This can be done by setting out a detailed and  
19 thorough summary of the facts and conflicting clinical evidence, stating his  
20 interpretation thereof, and making findings.” *Id.*

1 Here, the ALJ fails to cite any “facts and conflicting clinical evidence” from  
2 the record in support of these findings, nor does the ALJ offer any explanation of  
3 why his interpretation of the longitudinal treatment record and Plaintiff’s activities  
4 as reported in the CDIU investigation records is correct, as opposed to the findings  
5 of examining physician, Dr. Pellicer. Thus, the ALJ’s rejection of Dr. Pellicer’s  
6 opinion as unsupported by the longitudinal treatment records and Plaintiff’s  
7 activities, without the requisite interpretations of the evidence, is not supported by  
8 substantial evidence. This was not a specific and legitimate reason for the ALJ to  
9 reject Dr. Pellicer’s opinion.

10 For all of these reasons, the ALJ did not properly consider Dr. Pellicer’s  
11 opinion and it must be reconsidered on remand.

12 *3. Dr. Roland Dougherty*

13 In October 2014, psychologist Dr. Dougherty examined Plaintiff and opined  
14 that she has the ability to perform simple and repetitive tasks, may need repetition of  
15 directions, and may be able to do some detailed and complex tasks. Tr. 591-96. Dr.  
16 Dougherty also found that Plaintiff would be able to accept instructions from  
17 supervisors, but may have difficulty carrying out instructions, and is likely to have  
18 difficulty interacting with coworkers and the public due to her “significant  
19 depression and anxiety.” Tr. 596. Finally, Dr. Dougherty opined that Plaintiff’s  
20 “disorders are likely to make it difficult for her to maintain regular attendance in the  
21 workplace. She is not likely to be able to complete a normal workday/workweek

1 without interruptions from her serious psychological syndromes. The same  
2 difficulties are likely to make it difficult for her to deal with the stress encountered  
3 in the workplace.” Tr. 596. The ALJ gave great weight to the portion of Dr.  
4 Dougherty’s opinion that Plaintiff can do simple and repetitive tasks, and possibly  
5 some detailed and complex tasks, “as that accommodates for the limitations shown  
6 on his consultative evaluation and is consistent with [Plaintiff’s] subjective  
7 complaints.” Tr. 24. However, the ALJ gave less weight to two portions of Dr.  
8 Dougherty’s opinion. Tr. 24.

9 First, without citation to the record, the ALJ gave “less weight” Dr.  
10 Dougherty’s opinion that Plaintiff had “some social limitations, as Dr. Dougherty  
11 noted that [Plaintiff] was pleasant and cooperative and had fair social skills. The  
12 physical records document no notable social problems and consistently show  
13 [Plaintiff] to be pleasant and cooperative.” Tr. 24. The consistency of a medical  
14 opinion with the record as a whole is a relevant factor in evaluating that medical  
15 opinion. *See Orn*, 495 F.3d at 631. As an initial matter, the Court notes that at no  
16 time in his decision does the ALJ identify the precise “social limitations” opined by  
17 Dr. Dougherty that he gives less weight; thus, the Court is left to presume the ALJ is  
18 referring to Dr. Dougherty’s specific assessment that Plaintiff is “likely to have  
19 difficulty interacting with coworkers and the public due to her significant depression  
20 and anxiety.” *See Brown-Hunter*, 806 F.3d at 495 (a court “cannot substitute [the  
21 court’s] conclusions for the ALJ’s, or speculate as to the grounds for the ALJ’s

1 conclusions. Although the ALJ's analysis need not be extensive, the ALJ must  
2 provide some reasoning in order for [the court] to meaningfully determine whether  
3 the ALJ's conclusions were supported by substantial evidence.”).

4 As argued by Plaintiff, “the fact that [Plaintiff] is not rude or combative in a  
5 medical setting does not undermine Dr. Dougherty’s conclusion that her ‘significant  
6 depression and anxiety’ would interfere with coworkers and the public in an  
7 employment setting.” ECF No. 8 at 16. Moreover, similar to the opinions discussed  
8 above, the ALJ fails to cite any specific evidence from the record to support his  
9 finding that the record “documents no notable social problems,” nor does the ALJ  
10 offer any explanation of why his interpretation of Plaintiff’s “social limitations” is  
11 correct, as opposed to the findings of examining physician, Dr. Dougherty. *Reddick*,  
12 157 F.3d at 725. For all of these reasons, the ALJ’s rejection of the portion of Dr.  
13 Dougherty’s opinion regarding “social limitations,” is not supported by substantial  
14 evidence. This was not a specific and legitimate reason for the ALJ to reject Dr.  
15 Dougherty’s opinion.

16 Second, the ALJ gave “little weight” to Dr. Dougherty’s opinion that Plaintiff  
17 is not able to complete a normal workweek, because “al[t]hough Plaintiff performed  
18 poorly on Dr. Dougherty’s evaluations, subsequent records do not show such  
19 significant limitations.” Tr. 24. Again, the ALJ fails to cite any specific  
20 “subsequent records,” nor does he explain how those “subsequent records” are  
21 inconsistent with Plaintiff’s performance on the mental status examination by Dr.

1 Dougherty, which the ALJ acknowledges Plaintiff “performed poorly on.” Tr. 24.  
2 Dr. Dougherty noted that Plaintiff was “mildly psychomotorically retarded,” her  
3 affect was congruent with her reported depressed mood, her responses were  
4 tangential and slow to come, she sometimes forgot questions posed to her, her  
5 remote memory was poor, she was able to recall only 1 of 3 objects after a five  
6 minute period and only 2 numbers forward and backward on a digit span test, and  
7 she could not remember more than one step of a three step task. Tr. 594. Moreover,  
8 as noted by Plaintiff, and not considered by the ALJ, “subsequent records” from the  
9 longitudinal record include findings of cognitive deficits, concentration difficulties,  
10 depressed affect, memory difficulties, and “severe distress” from anxiety and  
11 depression. ECF No. 8 at 14 (citing Tr. 601, 605, 607, 668). Based on the  
12 foregoing, the Court finds the ALJ’s rejection of Dr. Dougherty’s assessment that  
13 Plaintiff was likely not able to complete a normal workweek because it is not  
14 consistent with “subsequent records,” is not specific, legitimate, and supported by  
15 substantial evidence.

16 For all of these reasons, the ALJ did not properly consider Dr. Dougherty’s  
17 opinion and it must be reconsidered on remand.

#### 18 **B. Additional Assignment of Error**

19 Plaintiff also challenges the ALJ's consideration of Plaintiff’s symptom  
20 claims. ECF No. 8 at 16-20. The ALJ found that “[o]verall, the longitudinal history  
21 of the treatment records fails to support [Plaintiff’s] complaints of disabling

1 impairment.” Tr. 23. Thus, because the analysis of Plaintiff’s symptom claims is  
2 largely dependent on the ALJ’s evaluation of the medical evidence, including the  
3 three examining provider opinions that the ALJ is instructed to reconsider on  
4 remand, the Court declines to address these challenges in detail here. On remand,  
5 the ALJ is instructed to reconsider Plaintiff’s symptom claims and conduct a new  
6 sequential analysis.

### 7 REMEDY

8 The decision whether to remand for further proceedings or reverse and award  
9 benefits is within the discretion of the district court. *McAllister v. Sullivan*, 888 F.2d  
10 599, 603 (9th Cir. 1989). An immediate award of benefits is appropriate where “no  
11 useful purpose would be served by further administrative proceedings, or where the  
12 record has been thoroughly developed,” *Varney v. Sec’y of Health & Human Servs.*,  
13 859 F.2d 1396, 1399 (9th Cir. 1988), or when the delay caused by remand would be  
14 “unduly burdensome[.]” *Terry v. Sullivan*, 903 F.2d 1273, 1280 (9th Cir. 1990); *see*  
15 *also Garrison v. Colvin*, 759 F.3d 995, 1021 (noting that a district court may abuse  
16 its discretion not to remand for benefits when all of these conditions are met). This  
17 policy is based on the “need to expedite disability claims.” *Varney*, 859 F.2d at  
18 1401. But where there are outstanding issues that must be resolved before a  
19 determination can be made, and it is not clear from the record that the ALJ would be  
20 required to find a claimant disabled if all the evidence were properly evaluated,

1 remand is appropriate. *See Benecke v. Barnhart*, 379 F.3d 587, 595-96 (9th Cir.  
2 2004); *Harman v. Apfel*, 211 F.3d 1172, 1179-80 (9th Cir. 2000).

3       The Court finds that further administrative proceedings are appropriate. *See*  
4 *Treichler v. Comm'r of Soc. Sec. Admin.*, 775 F.3d 1090, 1103-04 (9th Cir. 2014)  
5 (remand for benefits is not appropriate when further administrative proceedings  
6 would serve a useful purpose). Here, the ALJ improperly considered the medical  
7 opinion evidence, which calls into question whether the assessed RFC, and resulting  
8 hypothetical propounded to the vocational expert, are supported by substantial  
9 evidence. “Where,” as here, “there is conflicting evidence, and not all essential  
10 factual issues have been resolved, a remand for an award of benefits is  
11 inappropriate.” *Treichler*, 775 F.3d at 1101. Instead, the Court remands this case  
12 for further proceedings. On remand, the ALJ should reconsider the medical opinion  
13 evidence, and provide legally sufficient reasons for evaluating the opinions,  
14 supported by substantial evidence. If necessary, the ALJ should order additional  
15 consultative examinations and, if appropriate, take additional testimony from a  
16 medical expert. In addition, the ALJ should reconsider Plaintiff’s symptom claims,  
17 the remaining steps in the sequential analysis, reassess Plaintiff’s RFC and, if  
18 necessary, take additional testimony from a vocational expert which includes all of  
19 the limitations credited by the ALJ.

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